

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 02-20830-CIV-GOLD/SIMONTON
MIAMI DIVISION
THIS IS A CONSENT CASE

**NIGHT BOX
FILED**

JUL 07 2003

CLARENCE MADDOX
CLERK, USDC / SDFL / MIA

LUZ VILLABA,)
)
Plaintiff, and similarly situated)
individuals,)
)
vs.)
)
RAFAEL PEREZ, an individual BLANCA)
PEREZ, an individual and)
RICO PAN, INC., a Florida corporation,)
)
Defendants.)
/

JOINT PRE-TRIAL STIPULATION

Pursuant to Local Rule 16.1.E. of the Southern District of Florida and the Court's Order, the parties hereby submit their joint pre-trial stipulation as follows:

1. Short Concise Statement of Case

Plaintiff:

Plaintiff Villaba was employed by Defendants as a salesperson in Defendants' bakery starting in or about April 1998 until her resignation in January 2002. Her job duties included helping customers, and re-filling the napkin, salt and sugar dispensers. Plaintiff's duties rendered her non-exempt under the Fair Labor Standards Act (FLSA). Defendants come within the jurisdiction of the FLSA. Plaintiff worked an average of 46-48 hours per week and occasionally worked as much as 53 hours per week. However, Defendants paid her the same amount every week, no matter how many hours Plaintiff worked. Therefore, Plaintiff is due overtime pay for every week in which she worked

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more than forty hours at a rate equal to one and a half times her regular rate of pay pursuant to the FLSA.

Defendants:

Rico Pan, Inc. is a small bakery owned by Rafael Perez, Blanca Perez and another individual not joined in this lawsuit. The bakery employs about thirteen employees including the owners and has gross sales in the amount of about six hundred thousand dollars (\$600,000) per year. Plaintiff, Luz Villaba was employed by Rico Pan, Inc. as a sales person/waitress from April of 1998 until she resigned in Januray 2002. She worked thirty-five (35) hours per week and got paid accordingly. Contrary to Plaintiff's assertion she did not work an average of forty-six (46) to forty-eight (48) hours a week or as much as fifty-three (53) hours per week. She worked thirty-five hours per week as is evident by her pay stubs, the fact that she, during the time she worked at Rico Pan, Inc., never complained about being shorted in her pay, and the fact that she solicited a letter from the owners of Rico Pan, Inc., and obtained a letter outlining the hours that she worked per week.

2. The basis of federal jurisdiction.

Jurisdiction of this action is conferred upon the court by section 16 (b) of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216 (b). All acts or omissions giving rise to this dispute took place in the Southern District of Florida.

3. The pleadings raising the issues.

1. Plaintiff's Complaint
2. Defendants' Answer and Affirmative Defenses.

4. **A list of all undisposed motions or other matters requiring action by the Court.**

1. Plaintiff's Motion for Summary Judgment.
2. The Court's Order to Show Cause regarding the parties' mediation deadline.

5. **Concise statement of Uncontested facts**

1. Plaintiff was an employee of Defendants from April 17, 1998 through January 11, 2002.

2. Defendant Rico Pan Inc. is a Florida corporation doing business in Miami-Dade County at all times relevant to Plaintiff's Complaint. Its principal place of business is in Miami-Dade County.

3. Defendant Rico Pan is a bakery that is owned and operated by Defendants Rafael and Blanca Perez.

4. Defendant Rico Pan has gross sales of more than five hundred thousand dollars per (\$500,000) year and is engaged in interstate commerce, or uses the instrumentalities of such.

5. Defendant Blanca Perez determines how much the employees of the bakery will be paid and is also in charge of hiring the bakery's employees and managing the employees.

6. Defendant Rafael Perez works in the bakery every day.

7. Defendant's bakery is open for business from 7:00 a.m. until 8:00 p.m. seven days per week.

8. Defendants' bakery uses various ingredients for its products which come

from out of state or out of the country.

9. Plaintiff's job duties included helping customers, and re-filling the napkin, salt and sugar dispensers. Plaintiff worked behind the counter, as did the other salespersons who worked for Defendants.

10. Plaintiff Villaba was paid a salary.

11. Plaintiff's weekly paycheck was exactly \$154.50 (gross) for every week that she worked from January 3, 1999 through April 25, 1999. She was then given a pay raise to \$180.25 per week (gross) and earned precisely that amount every week until January 11, 2002, which was her last paycheck. Plaintiff was paid exactly the same amount every week with the exception of February 11, 2001, when she was paid \$164.80. Plaintiff was paid exactly the same amount every week for approximately 155 out of 156 weeks.

12. Defendants' bakery employs approximately thirteen employees as of October 2002, including approximately seven employees who hold the same position held by the Plaintiff – salesperson.

13. A review of the payroll records for all of Defendants' other employees reveals that in 2001, every employee received precisely the same amount of pay every week with the exception of Diana Alzate and Auxliadora Masis

13. Defendant Blanca Perez makes the schedules for all employees.

6. Issues of Fact which remain to be litigated

1. Whether Plaintiff worked more than forty (40) hours per week.

7. Concise Statement of Issues of Law to Which there is Agreement

1. This court has subject matter jurisdiction over this action.

2. Defendant Rico Pan, Inc. was an enterprise engaged in commerce as such terms as defined by the FLSA at all time material to Plaintiff's Complaint.

3. Defendant Blanca Perez is an "employer" within the meaning of the FLSA.

4. Defendant Rafael Perez is an "employer" within the meaning of the FLSA.

5. Plaintiff was a "non-exempt" employee within the meaning of the FLSA.

6. In the event that Plaintiff prevails, Plaintiff will be entitled to liquidated damages.

7. Plaintiff would be entitled to her attorney's fees should Plaintiff prevail in this matter.

8. Plaintiff would be entitled to her costs should Plaintiff prevail in this matter.

8. Concise Statement of Issues of Law to be decided

1. Whether Plaintiff is due overtime wages for two years prior to the time of the filing of Plaintiff's Complaint or three years.

2. Whether Defendants owe Plaintiff any overtime and, if so, what is the amount of such overtime that is due to Plaintiff.

3. If Defendants prevail, whether they would be entitled to their attorney's fees and costs from Plaintiff.

Plaintiff's Witnesses

Plaintiff

Blanca Perez

Rafael Perez

List of other possible witnesses:

Marta Lucia

Marta Inez

Diana Alzate

Manuela Vargas

Diane Alzate

Maria Auxiliadora Masis

Monica Taborda

Monica De Las Salas

Esmeralda Garcia

Luz Daris Muriel

Regina Ramirez

All of Defendants' witnesses.

All rebuttal and impeachment witnesses.

Defendants' Witnesses

Luz Villaba

Rafael Perez

Blanca Perez

Regina Ramirez

Jairo Garcia

Maria Auxiliadora Masis

Luz Daris Muriel

Karina Medina

Plaintiff's Exhibits

See attachment. Defendants have no objections to Plaintiff's exhibit.

Defendants' Exhibits


Defendants have one exhibit. Plaintiff's objections are A,I,R,H

For Defendants:

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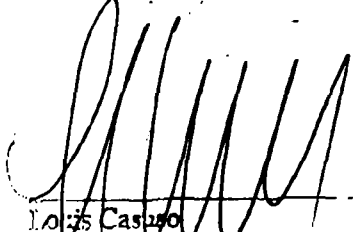
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Plaintiff's Exhibit:


See attachment

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